

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 17, 2012

In the Matter of BALDWIN, Minors.

No. 306873

Saginaw Circuit Court

Family Division

LC No. 07-030826-NA

Before: MARKEY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm because the trial court did not err in finding clear and convincing evidence that respondent could not be expected to provide proper care for the minor children, and that the minor children would be harmed if returned to respondent's care.

This Court reviews the trial court's findings of fact in termination proceedings for clear error. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The court's best-interest determination is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). MCL 712.19b also describes the grounds upon which termination of parental rights may be based:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court properly found clear and convincing evidence establishing the statutory grounds for termination of respondent's parental rights. The current case is the second proceeding involving respondent and the minor children. The children were temporary court wards in 2007 and were returned to the care of their father in 2008. In January 2010, a petition was filed because the father's alcohol abuse rendered him unable to care for the children. Respondent was provided significant services previously in 2007 and 2008 and again in 2010 and 2011. Despite all of these services, respondent was unable to complete a substance abuse program, was unable to live in any residential programs or sheltered housing arrangements because of her substance abuse issues and her inability to get along with the other residents, and continued to abuse prescription medications and cocaine. The therapist who had been treating the children for many years and who had worked with respondent did not feel that she would ever be in a position to care for the children because they were not her priority.

Respondent did not appear for the termination hearing because she lived in another county and participated by telephone. She excused herself from the telephone participation an hour before the morning hearing was adjourned for a lunch break because she had another appointment. The trial judge questioned her understanding of the proceedings to make sure that respondent was aware that the hearing was to determine whether she would retain or lose her parental rights to the minor children, and respondent indicated that she understood.

While it appeared that respondent was compliant with the service plan in the beginning of the current proceedings, she did not continue to be compliant. In fact, the trial court found that each and every allegation regarding respondent's lack of progress was true. Although respondent testified that she finally realized that she needed help, was entering a program that would take approximately 25 months to complete, but would be ready to care for the children before that, the trial court did not find respondent to be credible. Given respondent's failure to benefit from many services, both four years ago and in the past two years, aimed at assisting her with her substance abuse problems and her ability to care for the minor children, the trial court did not err in finding that she could not provide proper care and custody of her children within a reasonable period of time or that there was a reasonable likelihood that the children would be harmed if returned to her care. MCL 712A.19b(3)(g), (j).

The trial court also did not err in determining that termination of respondent's parental rights was in the children's best interests. The trial court did not ignore respondent's love for the children but found that any detriment to the children by terminating their mother's parental rights was far outweighed by the detriment that would occur if her rights were not terminated. Respondent did not make her children a priority and could not provide them with the safety and stability they needed.

Affirmed.

/s/ Jane M. Markey

/s/ Christopher M. Murray

/s/ Douglas B. Shapiro